

Q. But, in words or substance, did he not make it clear to you that he was at that time the Government lawyer in charge of the Uebersee case? A. Well, I really did not understand that he was necessarily the Government lawyer in charge of it.

Q. All right. Didn't he tell you he was a Government lawyer working on the Uebersee case? A. That is correct.

Q. And didn't he tell you that he had come to your office to ask you to show him the files relevant to the Uebersee case? A. No, he didn't tell me that.

Q. He did not tell you that? A. No, sir. He came in, as I understood—he was primarily interested in the 1931 tax case and the General Motors transaction folder. Uebersee tax folders through 1933-1936 were shown him.

Q. But you did not show him a document reflecting a business conference which you, Crittenden, and 2233 Fritz von Opel and Frankenberg had in Zurich in 1937? A. The question of Zurich in 1937 was not raised in the course of my conversation with Mr. Baum.

Q. And you did not think he was interested in that kind of document?

Mr. Gallagher: Just a moment, Mr. Burling. There is no obligation on anybody to show anything.

Mr. Burling: There is an obligation not to mislead Government agents.

The Court: Gentlemen, I think you will probably have to object to the question.

Mr. Gallagher: I do object, Your Honor.

The Court: What is pending now?

Mr. Gallagher: I will have to get the question read back myself.

The Court: He is trying to develop that this witness is biased, and I suppose if he withheld anything, if he can

Mr. Gallagher: We are stating that it would not be in show it, all right. If he cannot, all right.

proper. We are not stating he did do it. The witness stated Mr. Baum had not asked for anything else.

The Court: The question of the bias of the witness may be at stake, and if he knew the man wanted something and he deliberately withheld it, that might be a circumstance showing bias. On the other hand, if he thought he 2234 was inquiring about something else and he did not turn it over, of course, that would show he was not biased. I will give him a certain amount of latitude on it.

Mr. Gallagher: If the Court please, I would like the Court to ask Mr. Bayer to read from his memorandum. He showed me a longhand memorandum of everything Mr. Baum asked him for.

The Court: You can bring that out if there is any damage done.

2235

By Mr. Burling:

Q. Isn't it the fact, Mr. Bayer, that you were given by Baum, or that you were furnished prior to Mr. Baum's visit, a consent which Mr. Connor, who is Mr. Gallagher's partner, and Mr. von Opel signed, authorizing Mr. Baum, as a government attorney, to look for any and all relevant documents? A. The name of Mr. Baum was not mentioned in any instructions that we received authorizing the Department of Justice or any identifiable representative of the Department.

Q. Did Mr. Baum identify himself as a representative of the Department? A. Well, prior to Mr. Baum's visit, a representative had visited our office.

Q. But you also were satisfied by the production of credentials that Mr. Baum was a representative of the Attorney General of the United States, weren't you? A. That is right.

Q. You had in your file at that time, and were aware of, a document signed by Mr. Connor and Mr. von Opel, au-

thorizing you to show the Attorney General's representative any document that was relevant; is that right? A. That is correct.

Mr. Boland: Your Honor, I actually personally dictated that letter. I want it clearly understood and shown on this record that—

2236 Mr. Burling: I object to any statement of the fact—

Mr. Boland: I think it should be cleared up, Your Honor—very much so.

The Court: I am afraid I am going to have to rule in accordance with the procedure; now. We are beginning to get technical, now. You can ask him the question or take the stand yourself later on, if that is material. I do not think this is a matter of any terrific note.

Mr. Gallagher: This does not mean a thing.

The Court: It might not be. I do not think the procedure is difficult at all. Mr. Burling is trying to bring out that this gentleman probably withheld something because of his attachment to Mr. von Opel and that, therefore, he is a biased witness.

Mr. Burling: That is exactly right, Your Honor.

The Court: On the other hand, he is trying to maintain that he went through a very understandable procedure.

I will give you plenty of chance, if anything is brought out against him, for you to bring it up on redirect.

By Mr. Burling:

Q. I have only one more question on this topic.

Is it not the fact, Mr. Bayer, that Mr. Baum asked you to show him the files relating to the Uebersee or von Opel matter? A. He didn't ask to see all files, no.

2237 Q. What did he say? "Just show me a few files or the files you happen to have"? Or what? A. He

said that he was interested in the 1931 tax case in the General Motors transaction, as I understand it.

Q. You understood him to limit himself to that? A. Our working papers on this, which I got out for him and showed him.

He then asked whether he could see our copy of the contract in connection with the General Motors transactions. I got out the file of von Opel and showed him that. He looked at it.

Then, after some discussion, he asked would it be all right if he went through the rest of the file; and he went through the rest of the file marked "von Opel." The file marked "Uebersee" was not asked for. There was no discussion in 1937.

This particular document or paper was in the Uebersee file which Mr. Keefer, of the F. B. I., had already gone through seven or eight months before.

Q. Perhaps you did show it to Mr. Keefer, but you did not understand that Mr. Baum wanted to look at all the files you had on the subject? A. No, sir.

Mr. Burling: That is all I have on that topic. I think I would like a moment to read it.

2238 By Mr. Burling:

Q. When did you leave Zurich to make this trip through Switzerland and northern Italy? A. When did we leave Zurich?

Q. Yes, please. A. Friday morning—no; Thursday afternoon, August 12—Which trip is this, now?

Q. The trip through Switzerland and northern Italy. A. Oh, the automobile trip?

Q. To Italy. A. Friday morning, August 6.

Q. Do you not recall that after you came back from the automobile trip you had further business discussions at the office of Adler and Company? A. There were some further conversations and talks, yes.

Q. Well, you personally went there with Crittenden and Fritz von Opel and met Frankenberger there? A. To the best of my recollection, there was a get-together when we got back, yes.

Q. When did you get back? A. We got back late in the afternoon or early evening of Tuesday, August 10.

Q. When did you have the get-together you just spoke of? A. Wednesday, August 11.

Q. On August 12 you were there again, weren't you? A. No, we were over in Italy on August—

Q. No; I am talking about the Adler Bank. A. I don't know that we went back the following Thursday morning, but—

Q. Didn't you fix the date of the last meeting in accordance with the date of the memorandum which you had just prepared? A. That is as I recall.

The Court: My recollection of Crittenden is that he started off with two weeks, then he said three weeks, and then on cross-examination he was asked if it may have been five or six days, and he said that sounded about right.

Mr. Burling: I ask that this document be marked in evidence. I will agree to substitute a photostat and return this to the witness if he so desires.

Mr. Gallagher: No objection.

(The document referred to was marked as Defendant's Exhibit 116 and received in evidence.)

Mr. Burling: That is all.

Redirect Examination

By Mr. Gallagher:

Q. In October, 1931, Mr. Bayer, you were never told by Mr. von Opel that his father, at the suggestion of a German

lawyer, had given him a power of attorney and told him to bring it to America with him, and if when he got
 2240 here he found out that there might be some delay about using his gift agreement for whatever purpose he wished, he could then have a power of attorney, and, as a result, he could then act as an attorney in fact?

Mr. Burling: I move to strike that question. It is clearly leading and beyond the scope of cross-examination.

Mr. Gallagher: That is completely within the scope of cross-examination.

The Court: I do not remember what he talked about on that. The only thing I remember his talking about was this custodian thing.

Mr. Gallagher: He said he did not know that Mr. von Opel signed as an attorney in fact. I am just bringing out that he did not even know he had a power of attorney.

The Court: Ask him what he did.

By Mr. Gallagher:

Q. Did you know whether or not Mr. von Opel had a power of attorney from his father? A. I did not know.

Q. Did Mr. Marin, in the office of Mr. Kresel, work in collaboration with your office in the preparation of tax returns—specifically, these tax returns in 1942 that we have talked about? A. Yes; or vice versa: we may have collaborated with him.

2241 Q. I see. In connection with that consent settlement, were any fraud penalties, or penalties of any nature, assessed in that matter by the Treasury Department? A. I think there were some delinquent-payment penalties, but that was all.

Q. No fraud penalties? A. Not that I know of.

Q. Were all deductions allowed, to the best of your recollection? A. Well, that is—there were deductions allowed.

Mr. Gallagher: That is all, Mr. Bayer.

The Court: I think I will take a 5-minute recess now.

(At this time a short recess was taken. The following then occurred):

Mr. Gallagher: We will call Dr. Meier.

(The testimony of the witness Dr. Eugen Meier was given through Mr. Joseph Laufer, who was first duly sworn to interpret the testimony).

Thereupon, Dr. EUGEN MEIER was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you state your name, please? A. (In 2242 English) Eugen Meier.

Q. Will you state where you reside? A. (Through the interpreter) Liestal, Switzerland.

Q. Where were you born? A. Staefa, Canton Zurich, Switzerland.

Q. Are you a Swiss citizen now? A. Yes.

Q. Will you state where you were educated? A. I attended the primary schools in Staefa and St. Gallen; the Gymnasium in Zurich; and I studied in Zurich and Geneva.

Q. Are you an attorney? A. Yes, an attorney.

Q. For how many years have you been practicing law? A. Forty-two years.

Q. Are you a member of a law firm in Switzerland?

A. Yes, I am a member of a law firm the name of which is Veit, Giesen, Meier, Veit, and Matter.

Q. Are you a Doctor of Laws? A. Yes, I am a Doctor of Laws.

Q. Have you held any official positions in Switzerland?

A. I was for several years a member and chairman of the Tax Appeal Commission of Liestal; a member of the Community Council of Liestal—that is, the small com-

community council. Furthermore, I was a member of the Cantonal Parliament of the Canton of Basle-Landschaft, and I still am at this time a member of the Board of Legal Examiners of the Canton of Basle.

Q. Have you served in the Swiss Army? A. Yes.

Q. What ranks have you held in that army? A. I am a colonel now, but I am not in active service because I am beyond the legal age.

Q. Did you serve in the Swiss Army in World War I?

A. In the first World War I was a captain and in charge of a mountain artillery company.

Q. Did you serve in the Swiss Army in 1939 and 1940?

A. I was active during 1939 and 1940 for several months with the chief of staff of the army, until April, 1940.

Q. What position do you occupy with the Uebersee Finanz-Korporation? A. I am a member of the council—administrative council—and president of the Korporation since 1932.

Mr. Gallagher: Your Honor, I should like now to identify these books of the Uebersee Finanz-Korporation, which the defendant has previously stipulated were books of the Korporation. I believe, from this witness' statement to me, that if he is shown them, he will be able to identify them; but he says he cannot state that unless he sees them one by one.

2244 Mr. Burling: I have no idea whether the witness can or cannot. Perhaps if I may be permitted to ask him two or three questions, I may have no objection at all. It is my belief he did not keep the books and never saw them.

Mr. Gallagher: That is correct. He did not keep them. But I know his testimony will be that for several years, at least, they were kept in his office, where Mr. Gaeng worked on them, and that he is familiar with Gaeng's handwriting, and that being shown them individually he

will be able to state whether or not they are Uebersee's books.

Mr. Burling: On counsel's statement, I withdraw the objection.

Mr. Gallagher: I know that statement is correct; but if you wish to ask him, I have no objection to your asking him.

Mr. Burling: If you state that that is what his testimony is, I have no objection.

Mr. Gallagher: Fine. Now, I should like to have, specifically, Plaintiff's Exhibits 149, 150, 151, 152, 153, and 154. Those are the only ones I want to see.

(The exhibits referred to were handed to Mr. Gallagher).

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibits 149, 150, 151, 152, 153, and 154, and I ask you whether or not these are the current books of the Uebersee Finanz-Korporation covering the years noted therein, which are, roughly, from 1937, on some, up through 1948. A. This is the 2245 main ledger of Uebersee Finanz-Korporation.

Mr. Gallagher: He has identified Plaintiff's Exhibit 149.

The Witness: From 1937 on to date.

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 150. A. This is the Journal of Uebersee Finanz-Korporation beginning with, generally, January 1, 1940, to date.

Q. I now show you Plaintiff's Exhibit 151. A. This is the account book containing accounts current from, generally, January 1, 1940, to date.

Q. I show you Plaintiff's Exhibit 152.

The Court: Is this gentleman your last witness?

Mr. Gallagher: Yes, Your Honor, our last witness in our case in chief.

The Witness: This is the book containing the inventories beginning January 1, 1937, to January 1, 1948. No subsequent inventories were taken.

By Mr. Gallagher:

Q. Did you ever see these books, which you have identified as Plaintiff's Exhibits 149, 150, 151, and 152, in Switzerland? A. Yes; I have had these books temporarily in my office in Liestal, and Mr. Gaeng, the third member of the administrative council, came from
2246 time to time to Liestal and brought the books up to date.

The Court: Pardon me. Do you intend to call any other witnesses, Mr. Gallagher?

Mr. Gallagher: We should like to recall Mr. von Opel for some questions.

Mr. Burling: I intend to call this witness as a hostile witness under Rule 43(b), to impeach him on one or two points.

The Court: Well, it will take some time!

Mr. Burling: I will take an hour with this witness, Your Honor.

By Mr. Gallagher:

Q. Is there anything further you have to say? A. It then became too complicated to keep the books in my office, because Mr. Gaeng had to come from time to my office, and Mr. Gaeng then, in the meantime, had been elected to the administrative council—to the administrative board—and took the books with him, and they were kept at his office subsequently.

I would like to ask the question: There are two more books that were shown to me. Whether I am to identify those as well.

Q. Yes. A. This is not a book of the Uebersee Finanz-Korporation A. G.

2247 Mr. Gallagher: This is not. Plaintiff's Exhibit 153 is not. This is of Fritz von Opel; I can see that.

The Witness: I have never seen this book before, and apparently it is not a book of the Uebersee Finanz-Korporation, A. G.

Mr. Gallagher: That was Plaintiff's Exhibit 154.

The Court: Well, I think I will adjourn now until 10 o'clock tomorrow morning.

(At 4:05 p.m. an adjournment was taken until Friday, January 7, 1949, at 10 a. m.)

2250

PROCEEDINGS

Thereupon, Dr. EUGEN MEIER resumed the stand and being previously duly sworn, testified as follows:

(The testimony of the witness Dr. Eugen Meier was given through Mr. Joseph Laufer, previously duly sworn to interpret the testimony.)

Direct Examination (resumed)

By Mr. Gallagher:

Q. Dr. Meier, is a Swiss corporation under a duty to keep books and records? A. Yes, sir.

Q. What books must a corporation in Switzerland keep pursuant to Swiss law? A. The statute does not explicitly provide what kind of books must be kept, but it does provide that such books must be kept as will clearly indicate the financial condition of the corporation.

Q. Well, would you state what are the usual bookkeeping methods employed by Swiss corporations? A. It is the custom to have a ledger, a book containing a list of assets or containing balance sheets; furthermore, a book containing accounts current which disclose the liabilities and 2251 assets of the corporation; and, furthermore, a ledger in which daily entries are being made. This does not mean, however, that the entries are being made daily, but they are entered in daily sequence.

Q. I will now have you look at Plaintiff's Exhibit 144 and ask you to state what that book is, if you know. A. This is, according to its inscription and its contents, a ledger of the corporation kept from 1929 to January 1, 1936, by Mr. Gaeng.

Q. I now show you Plaintiff's Exhibit 145 and ask you what that book is. A. This book, Plaintiff's Exhibit 145, is the journal of the Uebersee Finanz-Korporation which was kept from January 1, 1929, to December 31, 1936.

Q. I now show you Plaintiff's Exhibit 146 and ask you to state what that is, please. A. This book, Plaintiff's Exhibit 146, is the book containing balance sheets of the Uebersee Finanz-Korporation from 1929 to 1936. The entries therein are made partly by Mr. Gaeng and partly by an assistant of Mr. Gaeng, whose handwriting also appears in other records and, as far as I know, was the daughter of Mr. Gaeng. She had commercial training.

Q. I show you Plaintiff's Exhibit 147 and ask you to state what that is, please. A. This book, Plaintiff's 2252 Exhibit 147, is the journal of the Uebersee Finanz-Korporation which was kept from January 1, 1937, to December 31, 1939, throughout by Mr. Gaeng.

Q. I now show you Plaintiff's Exhibit 148 and ask you what that is. A. Plaintiff's Exhibit 148 is the book containing accounts current of the Uebersee Finanz-Korporation from January 1, 1937, to December 31, 1939.

Q. I now show you Plaintiff's Exhibit 153 and ask you

to state what that is. A: Yesterday I was of the opinion that this book is not a book of account of Uebersee Finanz-Korporation; but subsequently I have ascertained that the entries therein also pertain to Uebersee Finanz-Korporation. It does represent a book containing accounts current. However, in contrast to the other book it contains only a partial set of accounts current. It is a subsidiary or auxiliary book containing entries of the Uebersee Finanz-Korporation from November 16, 1939, to December 31, 1945.

Q. Dr. Gaeng, do you know as a fact that these books are books and records of the Uebersee Finanz-Korporation?

Mr. Burling: Is this question asked by way of telepathy?

This witness is not Mr. Gaeng.

2253 Mr. Gallagher: I am sorry, Dr. Meier.

The Witness: Yes.

By Mr. Gallagher:

Q. Were these books ever kept in your office? A. They were kept temporarily in my office.

Mr. Gallagher: I now offer these exhibits, Your Honor: Plaintiff's Exhibits 144, 145, 146, 147, 148, 149, 150, 151, 152, and 153.

Mr. Burling: No objection.

The Court: That dispenses with the necessity of the stipulation?

Mr. Gallagher: I believe so, Your Honor.

The Court: Without objection, Mr. Burling's request to withdraw the stipulation will be granted.

Mr. Gallagher: All right.

(Plaintiff's Exhibits 144, 145, 146, 147, 148, 149, 150, 152, and 153 were received in evidence.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibits 141, 142, and 143 and ask you to state what those folders are. A. These folders contain bookkeeping vouchers for the respective years; that is, folder 141 contains bookkeeping vouchers for the year 1940; folder 142 contains those for the year 1941; and folder 143 contains those for the year 1942.

Q. Were those folders kept in the regular course of business? A. These folders were kept in the ordinary course of business by Mr. Gaeng, who inserted the bookkeeping vouchers in the folders and made the appropriate entries on the records.

Mr. Gallagher: I now offer Plaintiff's Exhibits 141, 142, and 143, they being the back-up folders to the books which have been previously introduced.

Mr. Burling: No objection.

(Plaintiff's Exhibits 141, 142, and 143 were received in evidence.)

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibits 174, 175, and 176 and ask you to state what those are.

Mr. Burling: If Your Honor please, this embarrasses me somewhat. I understand these are folders which we were not shown, although there was a court order requiring that the books—

Mr. Gallagher: Let me interrupt, if I can help you, Mr. Burling.

The court order required all books up to 1942. They came, and certain specific books came to 1942. Among the

books that came up to 1942 are four of these exhibits 149 to 153, which are our main books which run down through the year 1942.

Mr. Burling: And those are after 1942. I have no objection.

Mr. Gallagher: That is right. They are bookkeeping entries for entries put in the books after 1942, which had never been previously requested by the Government.

Mr. Burling: I apologize to the Court. I understand.

Mr. Gallagher: These were just brought by Dr. Meier, with him, pursuant to our request.

The Court: All right.

The Witness: These exhibits, 174, 175, and 176, are folders of bookkeeping vouchers along the same lines as those to which I have referred previously, to wit, Exhibit 174 contains bookkeeping vouchers for the years 1946, 1947, and 1948; Exhibit 175 contains those for the years 1944 and 1945; and 176 contains bookkeeping vouchers for the year 1943.

I wish to say that I cannot state whether there are additional vouchers contained therein. I did not make a complete check but merely sampled the vouchers to establish that the inscription on the folders corresponds to what is contained in them.

Mr. Gallagher: I now offer Plaintiff's Exhibits 2256 174, 175, and 176.

(Plaintiff's Exhibits 174, 175 and 176 were received in evidence.)

The Witness: I would like to add that if I am requested to make a detail check, I would require another day to go over all these vouchers separately.

Mr. Gallagher: I do not believe that will be necessary.

Mr. Burling: I would like the record to show that we have never seen these. We have no knowledge either way.

Mr. Gallagher: All right.

By Mr. Gallagher:

Q. Are all financial transactions of the Uebersee Finanz-Korporation shown in the hauptbuch, the inventurenbuch, the journal, and the konto korrentbuch? A. Yes.

Mr. Burling: I object to the question unless it is first shown that this man kept the books. I think the testimony is that he did not.

The Court: What is the question?

Mr. Gallagher: The question merely was, Are all financial transactions of Uebersee shown in the four books, the hauptbuch, the inventurenbuch, the journal, and the konto korrentbuch?

2257 The Court: I doubt if he would know that.

Mr. Gallagher: If the books were kept in his office under his supervision, as they were for a period of time—

The Court: I do not understand that he worked on the books.

Mr. Gallagher: He did not work on them.

The Court: I do not know that he would be qualified to know if all the transactions are in them.

Mr. Gallagher: I see.

By Mr. Gallagher:

Q. To the best of your knowledge, do the exhibits previously referred to contain therein all financial transactions of the Uebersee Finanz-Korporation?

Mr. Burling: I object to that also unless it is shown that he had some knowledge.

The Court: Yes.

Mr. Burling: All that he has done is to recognize the covers of these books.

Mr. Gallagher: I will withdraw that and ask this:—

By Mr. Gallagher:

Q. If the books which have just been offered in evidence, and which contain therein the hauptbuch, the journal, the konto korrentbuch, and the inventurenbuch, are properly kept under Swiss law, would they then contain all financial transactions of the Uebersee Korporation?

2258 Mr. Burling: I object to that. It is hypothetical.
The Court: I think that would not help us any.

Mr. Gallagher: That is all right, Your Honor.

By Mr. Gallagher:

Q. Dr. Meier, who were the officers and directors of the Uebersee Finanz-Korporation from the year 1941 until the present time? A. May I point out that we cannot speak of directors. In Switzerland a director is the man who manages a corporation under the supervision of the administrative board. That is, he is the man who actually handled the business from day to day. However, in the administrative board—I understood the question to refer to the years 1941 and following?

Q That is right. A. During the entire period I was a member and president of the administrative board. Also during the entire period Dr. Frankenberg was a member of the administrative board. However, Dr. Frankenberg, since May, 1940, has been in the United States and was no longer in Switzerland. The third member of the administrative board was Dr. Henggeler, an attorney at law from Zurich. So far as I recall, he resigned at the end of 1942 or the beginning of 1943.

2259 Since under Swiss law at least two members of the administrative board must be Swiss citizens, resident in Switzerland, with the resignation of Dr.

Henggeler, I was left; and since Dr. Frankenberg at that time was no longer residing in Switzerland, and since he was at that time an Austrian citizen, and in the meantime I understand he became an American citizen, an additional Swiss member had to be appointed to the administrative board.

In lieu of Dr. Henggeler, Mr. Gaeng was appointed. He is a Swiss citizen and lives in Zurich.

Q. Dr. Meier, did the Uebersee Korporation conduct any business operations in Hungary or Germany or in any country with which the United States was at war subsequent to December 6, 1941? A. Would you permit me to give you a little background?

Q. Surely. A. The Uebersee Finanz-Korporation has its major assets here in the United States. In addition, there was the house—building—in St. Moritz where Mr. Fritz von Opel has resided in the past. There was, moreover, a coconut plantation in British East Africa. A further interest of the corporation was the Transdanubia Bauxit, A.G., in Budapest.

The Uebersee Finanz-Korporation in previous years had guaranteed a bank loan to that corporation, in which 2260 it was interested. The Transdanubia Bauxit, A.G., was then requested to repay the loan, so that the securities which the Uebersee Finanz-Korporation had put up as a collateral would be free. The Transdanubia Bauxit, A.G., then repaid this loan as of December 31, 1942. Since that time there were no business relationships with that corporation.

When the upheaval in Hungary took place, the mines corporation was nationalized, and we have put in our claim for the corporation there.

Mr. Burling: May I ask that the date be fixed at which time the mine was nationalized?

By Mr. Gallagher:

Q. Will you state when the mine was nationalized? A. when the upheaval took place—well, the claims were put in in 1946 or 1947. There were statements made in the Swiss press, according to which claims were required to be filed, and I think that we put in our claim about 1947. I don't recall that precisely.

Q. Did the Transdanubia corporation repay the loan directly to you, or did the bank in Zurich merely release your collateral? A. The repayment was not made to us. We were not creditors. The repayment took place to the bank, and thereupon our collateral was released.

2261 Q. Do I understand you correctly to say that the repayment was made to the Hungarian bank in the first instance, and thereafter the Swiss bank in turn released your collateral? A. Yes; released the collateral.

Q. Now, did the Uebersee Korporation invest any money in other corporations or business enterprises after December 6, 1941? A. No.

Q. Did the Uebersee Korporation give any instructions or orders to any persons, agents, corporations, or other business enterprises with respect to the operation of the mines in Hungary subsequent to December 6, 1941? A. I don't know anything of that, but it cannot be possible, because otherwise I would have had notice of it.

May I add that Dr. Frankenberg was at that time in the United States, and so was Mr. Fritz von Opel, who was so severely restricted in his liberty that he could not possibly make such orders.

Then, there was Dr. Henggeler, subsequently replaced by Mr. Gaeng; and they surely did not give such instructions, because they had no competence to give them. And as far as I myself am concerned, I can positively state that I did not give such instructions.

2262 Mr. Burling: I move to strike that part of the answer which relates to what Henggeler or Gaeng "surely" did.

The Court: I will disregard that.

By Mr. Gallagher:

Q. How many members of the administrative council are required to act jointly in performing a function of the corporation? A. There must be two signatures.

Q. Do you know who directed all the policies and investments of the Uebersee Finanz-Korporation?

Mr. Burling: Will you fix the date, please?

Mr. Gallagher: I will strike that. I will reframe the question.

By Mr. Gallagher:

Q. Do you know who directed all investments and policies of the Uebersee Korporation from the year 1932 down to the present time, with particular reference to the period subsequent to December 6, 1941?

Mr. Burling: I object to the question on the ground that it contains two. Counsel is asking about 1932 to date, with particular reference to—

Mr. Gallagher: I will strike it again.

By Mr. Gallagher:

2263 Q. Will you state who from 1932 until the present time always controlled and directed the investments and policy of the Uebersee Korporation? A. That was Mr. Fritz von Opel. I must add this was until 1940, when Mr. von Opel went to the United States. Subsequently no new investments were made, since there were no means to make them.

Q. When was the last time, Dr. Meier, that you saw Wil-

helm von Opel? A. I never saw him. I never saw Mr. Wilhelm von Opel.

Q. When was the last time you received any communications or instructions from him? A. I neither received instructions nor communications from Mr. Wilhelm von Opel.

Q. To your knowledge, did the Uebersee Korporation ever receive any instructions or directions from Wilhelm or Marta von Opel? A. So far as I know, that never took place.

Q. Now, just one last question: On yesterday you stated that you could not identify Plaintiff's Exhibit 154. After the recess, you went over the books again. Will you state now what that book is? A. This exhibit was not in the form in which the other books of Uebersee Finanz-Korporation are, but subsequently, by comparing it with those books, I became convinced that this also is a 2264 record—a book—of the Uebersee Finanz-Korporation containing investments and securities.

• Mr. Gallagher: I may state, Mr. Burling, that it is merely a page breakdown of some of the stuff in the journals. Everything in the journals is here, and there is nothing else before you. But for ease you will have the Transdanubia account before you, whereas in the ledger you would have to keep going back and forth. Have you any objection?

—Mr. Burling: No.

Mr. Gallagher: I now offer it.

(Plaintiff's Exhibit 154 was received in evidence.)

By Mr. Gallagher:

Q Did Wilhelm von Opel or Marta von Opel, or any representative of Wilhelm or Marta von Opel, ever vote in the stockholders' meetings of the corporation? A. No.

The entire share capital was held by him, and he was represented by Frima, a Liechtenstein institution, except for the period when the shares were sold to the Union Bank of Switzerland.

Mr. Gallagher: That is all.

Your Honor, Mr. Lanfer just stated to me that he would like to take a rest for a few minutes. His voice is 2265 a little tired from doing all this translating.

The Court: We will take a five-minute recess.

(At 10:50 a.m. a recess was taken until 11:10 a.m.)

Cross Examination

By Mr. Burling:

Q. Will you state, if you know, Dr. Meier, what the investment of Uebersee in Transdanubia Bauxit was on December 6, 1941? A. I cannot say that without seeing the books.

Q. Now, I will show you Plaintiff's Exhibit 154, which you identified as one of the books of account of Transdanubia, and ask you if you can now, with the assistance of the book, tell the investment of Uebersee in Transdanubia Bauxit as of December, 1941? A. I would have to have also the other books of account, and together with those I should be in a position to state that.

Mr. Burling: Perhaps we could shorten this. I believe counsel will stipulate that as of that date the investment was in excess of 100,000 Swiss francs.

Mr. Gallagher: We stipulate that. Plus accounts receivable.

Mr. Burling: I am not sure of that. That is to say, the money which had been paid in for stock plus cash lent to

Transdanubia was in excess of 100,000 Swiss francs?
2266 Mr. Gallagher: Yes.

By Mr. Burling:

Q. What action did you take as the chief officer of Uebersee after that date with respect to this investment?

Mr. Gallagher: Your Honor, if I may interrupt, I cannot see how the question has anything to do with the question that we have before us in the case.

Mr. Burling: One of the issues in the case—

The Court: I have forgotten the question.

Mr. Gallagher: Our contention is that the fact that he had an investment which remained as an investment during the period of the war is absolutely irrelevant when there is no transaction.

Mr. Burling: All I am trying to find out is if there were any transactions.

The Court: He has been asked by you about activities with Hungary since then.

Mr. Burling: Would you read the question, Mr. Reporter, please?

The Reporter: (Reading) "Question: What action did you take as the chief officer of Uebersee after that date with respect to this investment?"

2267 The Witness: I have not taken any action. We had no means for engaging in transactions. I have not taken any action whatever.

By Mr. Burling:

Q. Now, Switzerland between 1941 and 1945 was not at war with Hungary was it? A. No.

Q. It would have been possible for you to have either written or to have gone to Budapest during those years, would it not? A. Hungary was occupied by the Germans, as far as I know, in 1941. There was in April, 1941, an in-

vasion of the Balkans by the Germans, and Hungary was occupied by the Germans, and communications were almost impossible.

Q. Is it not the fact that the Germans were in Hungary in 1941 as allies of Hungary? A. Yes, they marched in as friends.

Q. Switzerland was not at war with Germany at that time, was it? A. No.

Q. Do you not think it was possible to communicate between Zurich and Budapest up until the time that the Russian Army occupied Budapest? A. Yes; correspondence was possible.

Q. Did you have any correspondence after December 6, 1941, with any officers or agents of Transdanubia Bauxit? A. Personally, no.

Q. Well, you know, do you not, that someone—some agent of Uebersee Finanz Korperation—did maintain a correspondence with officers of Transdanubia Bauxit?

Mr. Gallagher: When is this occurring?

Mr. Burling: After December 6, 1941.

Will you read the question?

(The last question was read by the reporter.)

A. All I know is that this loan—that is, the credit—the loan agreement was terminated.

By Mr. Burling:

Q. Well, you also know, do you not, that officers of Uebersee were in touch throughout the war period with Transdanubia Bauxit's officers in Budapest? A. I do not know that.

Mr. Gallagher: We have no objection to the answer, and I was going to say that we have no objection to the wit-

ness' answering the question as such; but I would like the record to reflect that there has been no evidence submitted in this case to corroborate that. It is an hypothesis or assumption.

Mr. Burling: I did not ask that hypothesis; I asked a question of fact of the plaintiff corporation.

2269 The Court: It is answered now.

Mr. Gallagher: All right.

By Mr. Burling:

Q. Is it your testimony that after December 6 you paid no attention whatever to an investment of over a hundred thousand Swiss francs? A. Whether I paid any attention to this investment, the investment was embodied in shares and we could not take out these shares. The question of the loan is a different one.

Q. Transdanubia Bauxit was wholly owned by Uebersee; is that right? A. So far as I know, that is so, but I do not know the details, because this was a transaction entered into several years before by Mr. Fritz von Opel, and I could not swear to it.

Q. At any rate, you do not deny that Transdanubia Bauxit was wholly owned by Uebersee at all times after December 6, 1941? A. I believe yes, but there was nothing we could do about it, because nobody would have bought these shares from us. If he would have sold the shares, we would have to sell them to persons within the German territory—that is enemy territory. Thus we kept the shares in the safe and we did not do anything about
2270 them.

Q. Please confine yourself to giving direct answers to my questions.

Mr. Gallagher: And I think, however, Your Honor, so the witness may be well apprised, that he should be

advised through Mr. Laufer that he can make an explanation.

Mr. Burling: I deny that. I do not believe that is correct law.

The Court: It depends upon whether he can answer it yes or no. If it is the type of question where he can, why,—

Mr. Burling: The last question was a very simple one, if Your Honor please.

By Mr. Burling:

Q. Now, you have been a lawyer for over 40 years, haven't you? A. Forty-two years, yes.

Q. And you regard yourself as a man of high moral probity, do you not? A. Must I give an opinion as a witness or state facts?

Q. Well, I would like to know the fact.

The Court: Well, we will assume that.

By Mr. Burling:

Q. And you understood that Fritz von Opel was interned in the United States in 1942, did you not? A. Yes.

Q. Now, is it your testimony that you took no step 2271 to safeguard the interest or to supervise the investment which Uebersee had in Transdanubia during the years 1941, 1942, 1943 and 1944? A. We did supervise it, but we did not sell it.

But you did supervise it? You did carry out your duty of supervising the investment in Transdanubia; is that correct? A. Yes. If we have something in our accounts, we have to keep it there to see to it that it does not get out.

Q. You not only did not sell it; you watched over and supervised the investment; isn't that true?

Mr. Gallagher: Your Honor, I realize what Mr. Burling is driving at in the word "supervised." I think the witness clearly in the past, in response to his questions, indicated clearly what he meant by "supervised," but I think he should clarify it.

The Court: Read the question to him, please.

(The last question was read by the reporter.)

The Witness: It was there and we did not sell. It was there and it stayed there, and we kept it there until the postwar period, and there it is now.

May I ask a question: What should I have done?

By Mr. Burling:

Q. Don't you think that you had a responsibility in your fiduciary capacity of supervising an investment of over a hundred thousand Swiss francs? A. I would have had a responsibility if I had violated my duty, not under the American law, but under the Swiss law, and I did not violate any duty. If Mr. Fritz von Opel is of a different opinion, he can call me to account for it.

Q. Well, I am not suggesting that Fritz von Opel is trying to sue in any court.

My question is, Since Fritz von Opel was interned in America, you were the only person, were you not, who could supervise his investment, of a hundred thousand francs in Transdanubia? A. I do not understand what you mean by "supervision."

Q. Then, I will try to clarify it. Did you not think that you had an obligation, after December 6, 1941, to keep informed as to what the people in Budapest, the officers of Transdanubia, were doing with an investment of over a hundred thousand francs? A. The loan that

was given was not made subject to any conditions or requirements. As far as the share capital was concerned, the investment was made, and I did not see any obligation to do anything about that. Transdanubia was an independent corporation.

Moreover, as I stated before, the policies as to investment and business transactions issued from Mr. Fritz 2273 von Opel.

Q. Do you think that Fritz von Opel was giving instructions as to the mining of bauxite when the United States was at war with Hungary and when Fritz von Opel was in a United States internment camp? A. Hardly.

Q. Very well. Now, who was exercising the responsibility of supervising the officers of Transdanubia Bauxit when Fritz von Opel was interned? A. Our company.

Q. Very well. Thank you.

The question is just—

Mr. Gallagher: Your Honor, we object. We want to hear the explanation.

Mr. Burling: I suggest that if there is an explanation, the appropriate time for it to come out—

Mr. Gallagher: I agree that is one way we can do it, but you have insisted at all times, particularly with Miss Schoch, that she be given an opportunity to explain when she was being cross-examined rather than doing it on redirect, if you will recollect.

Mr. Burling: Certainly, if a witness is asked to explain something, the witness should be allowed to explain without interruption.

The Court: It depends on the question.

(The last question and answer were read by the reporter.)

2274 The Court: Make a note of that and ask him about it on redirect.

Mr. Gallagher: All right, Your Honor.

By Mr. Burling:

Q. Will you describe your position with Uebersee, please?

A. I was president of the administrative board.

Q. And you were made president of the administrative board in April or May of 1932, were you not? A. Yes, 1932.

The Court: 1932?

The Interpreter: 1932.

By Mr. Burling:

Q. And at that time will you state where the main office of the Korporation was located? A. At the time when the block of shares was acquired by Mr. Fritz von Opel, the Korporation had its offices at the offices of the Adler and Company.

Q. And that is 16 Peterstrasse; is that right? A. That is the address now. At that time it was Bahnhofstrasse, No. 65. I do not recall the precise number. But Adler and Company has moved from the Bahnhofstrasse address to Peterstrasse.

Q. Do you remember when the move took place? A. No. Possibly we were at the Peterstrasse address 2275 already in 1932, but I cannot state that precisely.

Q. You have been a director of the Alder Bank since 1924, haven't you? A. Not a director, but a president of the Administrative Board, with the exception of one year. I believe one year I was not in that position.

Q. And that was before Fritz von Opel acquired the interest, either directly or for his father, in Uebersee Finanz-Korporation? A. Yes.

Q. Now, is it not a fact that Adler and Company of Zurich has advanced large sums of money to Uebersee

Finanz Korporation in connection with this present lawsuit? A. In connection with this lawsuit, I do not know. I do know that there are large advances made by Adler and Company to Uebersee Finanz-Korporation, but I do not know that it was in connection with this lawsuit.

Q. At any rate, Uebersee presently owes Adler and Company a large sum of money, does it not? A. Certainly. I cannot state the amount, but the amount is recorded in the books.

Q. Well, without stopping to go into the books in detail, can you approximate the amount of money which Uebersee today owes Adler? A. I would rather
2276 look for that in the books, because I would not like to state a sum which is not correct.

Q. What book would you like to look at? A. That could be checked in the account book entitled "Accounts Current."

Q. Now, while Professor Kaufmann is looking for this book, I will go on. Then we will come back to this.

The assets of Uebersee outside of the United States consist of a cocoanut plantation; is that right? A. Yes; a cocoanut plantation in British East Africa, Tanganyka Territory.

Q. And what is that worth, in a round sum? A. It appears on the record as having a value of about 250,000 francs; somewhat more than that.

Q. Did Fritz von Opel ever tell you that he had told an Alien Enemy hearing board that that plantation was not worth more than 12,000 U. S. dollars? A. I do not know about that.

Mr. Gallagher: Would you translate those dollars into francs, Mr. Burling?

The Court: Well, we can do that later. Let us get along with the testimony.

Mr. Gallagher: It is particularly important. We get talking about two sets of figures, one which is many times the American dollars.

Mr. Burling: I take it that it will not be argued
2277 by counsel that 12,000 dollars is the equivalent of
250,000 francs.

The Court: I think we had better go on with the
testimony. I want to get through with it.

By Mr. Burling:

Q. You came to the United States by air, did you not?

A. Yes.

Q. Who paid for your ticket? A. I paid that myself.

Q. Do you have any understanding with anyone that
you will be reimbursed for the cost of your trip to the
United States? A. No. May I explain why I am paying
for the ticket myself?

Q. Yes, I wish you would. A. I lived with Mr. Fritz
von Opel through good times, and I want to bear with him
through the bad times.

Q. You also want to have the Adler Bank recover its
loan to Uebersee, do you not? A. That is not the reason.
The sole reason is the moral obligation I feel to assist
Mr. Fritz von Opel.

Q. I am not suggesting any lack of morality; I am
merely trying to find a financial fact.

You do know, do you not, that Adler and Company
will never be repaid its loan unless the Uebersee Finanz-
Korporation is successful in the present litigation?

2278 A. That is a deliberation, a consideration, which
I never entertained.

Q. Well, will you now think about it and tell us if you
do not now understand clearly that Adler and Company's
loan to Uebersee will never be repaid unless Uebersee
is successful in this litigation? A. I cannot judge that
right now. As far as I am informed, the loan to Uebersee,
as far as Adler and Company was concerned, was secured
by collateral, and, as far as I remember, the books of

Adler and Company reflect the claim against Uebersee as being one secured by a collateral.

Mr. Burling: May I ask for the book that the witness refers to?

May I ask Dr. Kaufmann to show the witness the books, and then I renew the question.

By Mr. Burling:

Q. What is the present loan from Adler and Company to Uebersee?

(The witness looked at the books in question).

Mr. Burling: I think the record should, however, show, if Your Honor please, that Dr. Kaufmann is pointing out the entries to the witness, who has identified the book.

Mr. Gallagher: If Your Honor please, we will take a recess, if the Court wants to grant it, and let him
2279 do it by himself. We are trying to help speed it up.

The Court: I think perhaps it is a little unusual to have a consultation.

Mr. Gallagher: All right. May we have a recess a moment, Your Honor?

The Court: Why don't we take that up after lunch?

Mr. Kaufmann: I might say there are six accounts between Adler and the Korporation.

Mr. Burling: I want the record to show just what happened.

I will withdraw the question and ask the Court's permission to renew it at the end of the luncheon recess.

The Court: Just tell Dr. Meier to acquaint himself with the books to the extent that he is able to do so during lunch. If he has any knowledge that he can give us without the books, of his own personal knowledge, we will get it.

Mr. Gallagher: I might say at this moment, Your Honor, if it will be of any help to Mr. Burling, if you are talking about the Frankenberg testimony, he said he personally advanced money to Mr. von Opel.

Mr. Burling: Yes. I think there are two separate advancements.

By Mr. Burling:

Q. Now, going back to 1932, when you became a member of the Administrative Board the other two members were Dr. Frankenberg and Henggele? A. Yes, sir.

2280 And Frankenberg remained an officer from 1932 until he left for Haiti in 1940; is that right? A. He is still a member of the Administrative Board.

Q. And he was also a member of the Administrative Board of the Adler Bank during that period; is that correct? A. He still is.

Q. And is it not correct that Henggeler performed the legal services required by Uebersee from 1932 until the present? A. Of Uebersee Finanz-Korporation?

Q. Yes. A. No, that is not correct. We have divided among ourselves the legal services. I have undertaken several of these legal matters for them since the classification of Uebersee as a banking corporation under the banking statute.

Q. And you also undertook legal services for Uebersee in connection with the United States Government in the year 1935; did you not? A. Yes, sir. I was here in the United States.

Q. You know Mr. Bernard Bernstein, do you not? A. Yes. This is the official of the Treasury Department with whom I had once a conference.

Q. And that conference took place, so far as you know, in the building of the Treasury Department, didn't it? A. Yes, Treasury Department.

Q. Here in Washington? A. (In English) Here in Washington, yes.

Q. And you understand, of course, that the Treasury Department is a branch of the United States Government?

A. (Through the interpreter) Certainly, yes.

Q. And you were accompanied by a Dr. Schlatter of the Swiss Legation; is that right? A. Yes. I was introduced to the Treasury by a verbal note of our then Minister Marc Peter, and thereupon I was invited to that conference.

Q. And the purpose of your going to the Treasury Department was to secure a license for Uebersee to remove from the United States \$1,250,000 in gold; is that not true? A. Yes.

Q. And the gold was stored with Ladenburg, Thalmann and Company at that time; is that not true? A. I do not think it was Ladenburg, Thalmann and Company. I was at a bank office in New York. I could point it out, but I do not remember the name. I was taken down to the safe and the safe was opened, and I saw the beautiful boxes with gold, but, unfortunately, I could not take them with me.

Mr. Burling: I take it that there is no dispute that it was Ladenburg, Thalmann and Company?

2282 Mr. Gallagher: No. I do not see where it makes any difference whether it was Ladenburg, Thalmann and Company.

By Mr. Burling:

Q. Who did you think, at the time you were in Mr. Bernstein's office, was the beneficial owner of that gold?

A. I have made a memorandum to the files which I sent to the members of the Administrative Board. I have seen it here. It is part of the files.

Q. I am well aware of that. My question is, When you were in Bernstein's office who did you think was the

beneficial owner of the gold? A. I was at that time of the opinion that it was property of the family von Opel. These assets originated from the sale of the Opel Works in Russelsheim. I knew that the Opel Works were not the property of Mr. Fritz von Opel, but of his father and his brothers. I therefore assumed that Fritz von Opel was the agent of this group and that he had some sort of interest in it.

Q. Yes; and that is what you told the United States Treasury Department in 1935, is it not? A. I have stated that along these lines to Mr. Bernstein, but I would like to point out that I did not go there and simply stated that.

Mr. Bernstein asked me who owns the Uebersee, 2283 A. G.

Q. Yes. First you said you did not know, and then Bernstein said, "You must know whether Fritz von Opel was the beneficial owner or not"? Isn't that what happened? A. It was not quite so. First Mr. Bernstein asked me who owns these shares. I stated that these are bearer shares and I cannot see from them who owns them. I only can see who votes them.

Thereupon Mr. Bernstein asked me, "What was your idea about it?" And then I said that it was my idea that they constituted property of the Opel family.

Mr. Burling: May I ask that the clerk hand Your Honor Defendant's Exhibit 66, because I am going to inquire about it now?

The Witness: I would like to add that I was at this time alone in the United States, first in New York and then in Washington. Mr. Fritz von Opel was in the Gulf of Mexico on a fishing expedition.

We then called Mr. Fritz von Opel by radio telegram, and he came as fast as he could.

I checked these dates from the files. I do not want to give the impression that I am indulging in imagination. He was in New York on May 14.

By Mr. Burling:

Q. Now, just a moment. You are under an obligation to answer my question directly and say nothing else
2284 at this time. A. But I see the intention to imply into my statements utterances which I do not want to make, and therefore I am interested in giving a full explanation.

Q. You may be interested and you may think you know what I am doing, but I advise you that American law and not Swiss law governs in this court, and I advise you that you are under an obligation to answer my question directly and then stop.

Mr. Gallagher: Your Honor, I would like the witness at this time, through the interpreter, to be advised that if he cannot answer the question with a categorical yes or no, he can explain.

Mr. Burling: If Your Honor will examine the last question, the witness went on and on and on.

The Court: Yes. I think we will be four or five days at that rate.

I think, Mr. Laufer, you should tell the witness that the attorneys for Uebersee will have a chance to question him on redirect; and, unless he cannot answer the question without a long talk, why, he should make a direct
2285 answer.

By Mr. Burling:

Q. I ask you to examine Defendant's Exhibit 66-A and state whether or not that is the file memorandum which you prepared regarding your conference with Mr. Bernstein. A. Yes, sir.

Q. Does that correctly reflect what took place at the Treasury Department during your conference? A. Yes, sir.

Q. At the time that you were talking to Mr. Bernstein, you felt a moral obligation to tell him what you thought was the truth, did you not? A. Certainly.

Q. So on the date of your conference with Mr. Bernstein, which was April 29—

Mr. Burling: And, if Your Honor please, at this moment I might say that our translation inexplicably bears the wrong date of April 4. The German is apparently clear. It is April 29. May I be permitted to correct the translation?

Mr. Gallagher: We shall be glad to oblige you, Mr. Burling.

Mr. Burling: Will you please read my question as far as it has gone, Mr. Reporter?

The Reporter: (Reading) "Question: So on the 2286 date of your conference with Mr. Bernstein, which was April 29—"

By Mr. Burling:

Q. (Continuing) 1935, you believed that Uebersee Finanz-Korporation was owned beneficially by a group of the von Opel family, which included Fritz von Opel and also included other members of his family? A. That was my opinion on April 29, 1935.

Q. You testified here this morning that you never saw Wilhelm von Opel in your life, did you not? A. No.

Q. So your opinion as of April 29, 1935, was formed on the basis of what was told you by Fritz von Opel; is that not correct? A. No. What I heard from Mr. Fritz von Opel, I heard on May 14.

Q. On April 29 you made a statement to Mr. Bernstein. On the basis of whose statement to you did you make this statement to Mr. Bernstein? A. I have stated that before: that I had formed this idea on the basis of my

knowledge that Mr. Fritz von Opel was not the owner of the Adam Opel, A. G.

Q. Somebody must have told you something in order for you to have had any idea at all? A. No. I can form an idea about something without being told by any
2287 person regarding it. I can form an opinion on that.

Q. Do you hear voices? A. No, I don't hear voices.

Q. Who told you any facts on the basis of which— A. (Interposing) If I am being asked whether I hear voices, I may be given an opportunity of saying how I formed this opinion.

Q. I am trying to find out the name of the person who told you any facts on the basis of which you made that statement to Bernstein. A. Nobody told me anything, but I am not entirely devoid of reason, and I can form my opinions without hearing voices.

Q. In 1932 you knew that Fritz von Opel had purchased the Uebersee shares, did you not? A. Yes, I knew that he purchased Uebersee shares with the money which I imagined to represent the family property of the Opel family—the assets which Uebersee represented.

Q. In other words, prior to April 29, 1935, Fritz von Opel never told you that he himself owned the shares or was the beneficial owner of the property? A. He never made any statements to me with respect to the beneficial ownership in those shares, but he voted those shares
2288 —he held those shares.

Q. I did not ask you anything about who voted shares; I asked you, Is it not true that Fritz von Opel never said, prior to April 29, 1935, that he owned the property? A. No.

Q. Do you mean it is not true, or do you mean, No, he never said that? A. He never stated anything to me about it.

Q. Whatever he did say to you from 1932, when you became the president of the administrative board of the

plaintiff corporation, until May, 1935, caused you to come to the conclusion that the beneficial ownership of Uebersee was in the Opel family; is that correct?

Mr. Boland: I object on the basis that this witness has already testified that he gave the information to the Treasury Department on the basis of nothing that came from Fritz von Opel; he formed his conclusion on the basis which he set forth.

The Court: It is not binding on the cross examiner.

Mr. Boland: The question is —

The Court: I know what he is trying to do. I understand what he is trying to get at. It is not binding on him what the witness says. I will permit him to ask that. He might have made it clear, but if there is any doubt about 2289 it, I will let him answer.

The Witness: No, not on the basis of what he told me. In fact, he never talked about the fact who owned shares. We never talked about that.

By Mr. Burling:

Q. Well, will you explain, then, how you felt qualified to make a statement as to the ownership of the shares to the United States Treasury in April, 1935? A. Gladly.

Q. Please do. A. Yes. Well, I stated that I came to the United States in 1935. I had the mandate from the Uebersee Finanz-Korporation to assert the claims which it had with respect to this gold.

The Uebersee Finanz-Korporation, being a Swiss corporation, has to cast its balance sheets in terms of Swiss francs. On our balance sheets the gold dollars appeared at the gold rate of exchange. If we were paid off in devalued securities for this gold after its seizure, we suffered a loss of one million and one-quarter francs, having a share capital of five hundred thousand francs. It can be understood that we fought against suffering such a loss.

For this purpose I came here and negotiated with the Treasury Department. I appeared there accompanied by Dr. Schlatter. I wrote this memorandum to the files concerning this conference, and I stated therein as follows—

Mr. Burling: If Your Honor please, I wanted to see how far this would go. I submit that this man by his own testimony is a lawyer of 44 years experience. He is also an influential banker. It is inconceivable that he does not know how to answer the question. I would like to ask the reporter to read my question again.

The Court: (To the interpreter) Just ask him to state simply the source of his information as to the ownership of the controlling interest as to which he testified; that is all.

The Witness: I already stated before this is not information supplied to me by a third party, but it is an inference at which I arrived after Mr. Bernstein pressed me in the same fashion as Mr. Burling is doing it now.

Mr. Burling: Well, I feel flattered by that. If Your Honor please, I submit that it is inconceivable that a man of legal training would think that you can form an opinion without having some fact to base it on.

The Court: I think that is a matter to be argued.

Mr. Gallagher: That is what I was going to submit, Your Honor.

2291 The Court: There is one thing that has been going through my mind. What would the significance be of the controlling ownership being in Wilhelm von Opel at that time?

Mr. Burling: That, I believe, Your Honor, would go to show that, in fact, there was no gift; that there was a sham.

The Court: I mean so far as this decision that Mr. Bernstein had to make is concerned. I know your point.

Mr. Burling: That is rather hard to explain, Your Honor, because Uebersee Finanz-Korporation took a very

indirect view, which was ultimately rejected by the Second Circuit.

The Court: That is what I have been trying to get at.

Mr. Burling: I think I can state Mr. Davis' argument. It was that if the plaintiff corporation was beneficially owned by a person not in the United States and by a person who did no business in the United States, then they were entitled to the license as a matter of law. They were entitled to export the gold.

But they were afraid that if it could be shown that the beneficial interest was in a person who did, in fact, do business, then Uebersee would not be entitled to export the gold.

So at that time Uebersee took the position that Fritz von Opel had bare legal title and that the beneficial interest was in Wilhelm, who was not doing business here.

The Court: Do you agree that that is so?

Mr. Gallagher: That is basically so.

The Court: That is all. If there was a difference about it, I would have to read the arguments, but I thought it would be helpful.

Mr. Gallagher: They argued three different points:

One, that the Uebersee Finanz-Korporation, A. G., as owner of the gold is not present within the jurisdiction through an agent or through doing business or otherwise.

Point two: This is not a case for disregard of the corporate entity by reason of dominance of a sole stockholder.

Point three: Independent of any question as to the corporate entity, no 'owner' of the gold here involved is subject to the jurisdiction of the United States.

Those were the three points they endeavored to cover in their memorandum.

The Court: All right.

Mr. Gallagher: They were all rejected, as Your Honor knows.

2293 The Court: What I wanted to know was, What would be the objective of the parties at that time,

or would they have any? Would they have any reason to indicate one way or the other? That answers it.

Mr. Burling: All we seek to get out of it—

The Court: I know exactly what you are seeking to get. But I wanted to know what the motive, if any, would be on the part of Fritz von Opel or anybody else at that moment.

Mr. Burling: The ultimate motive would be that they were told by counsel that if they could put a beneficial interest in Wilhelm, they could get the gold out, which would then, in Swiss francs, amount to something like over a million Swiss francs.

By Mr. Burling:

2294 Q. During the luncheon recess, Dr. Meier, have you been able to find out from inspecting the books of Uebersee, which you identified this morning, what the present debt owing to Adler and Company by Uebersee is? A. There is no indebtedness at this time.

Q. You change your testimony from this morning and now say that Adler and Company is not owed anything by Uebersee? A. I did not say that this morning. I reserved to myself the statement after I had an opportunity to check, and there were periods when the balance was in favor one way or another, and I had an opportunity to check, and there is no obligation owing at this time.

Q. Will you state whether or not Adler and Company has advanced large sums of money to Uebersee Finanz Corporation and/or Fritz and Margot von Opel since the end of hostilities between the United States and Germany? A. I would like to state with respect to that that Adler and Company is a banking corporation and that, pursuant to Swiss law, banking secrecy prevails, and I am not authorized to disclose to third parties concerning this matter.

Mr. Burling: If Your Honor please, that has been litigated several times, I think, in this Court and in the

Southern District of New York. Without exception, it has been held that secrecy is a matter of the law of the forum, not of the law of the place of the witness' residence.

Mr. Gallagher: Mr. Burling, we would like the interpreter to advise Dr. Meier that Mr. von Opel gladly lifts that privilege.

The Court: I think that that is undoubtedly the rule. It is the law of the forum.

Mr. Gallagher: Mr. von Opel lifts that privilege.

The Court (To the interpreter): Tell him it is the law of the forum and that Mr. von Opel waives whatever secrets he has in it anyway.

(The interpreter propounded to the witness the statement of the Court.)

2296 The Witness: I don't know.

Mr. Gallagher: If Your Honor please, if we can help Mr. Burling, because we are all mutually trying to expedite this, we recollect the record, and if you want to bring it to the Court's attention, Mr. Frankenberg did personally say he had lent some money.

Mr. Burling: Thank you. I am trying to find out, in addition, if Adler and Company had lent them money. As I understand it, the witness has said he does not know. So we have to go on.

By Mr. Burling:

Q. You testified that at the time you talked to Mr. Bernstein in the Treasury, you understood that Fritz von Opel was off on a fishing trip in the Gulf of Mexico?

A. Yes.

Q. When did you see Fritz von Opel for the first time after your conference with Bernstein? A. I don't recollect that, but it is my belief that it was May 14.

Q. At any rate, it was before May 28, 1935, was it not?
A. Certainly.

Q. What did Fritz von Opel tell you when you saw him concerning the ownership of the Uebersee shares?

A. I informed him about my conference, and I
2297 further advised him that I had expressed my view that he was representing a family property.

Q. My question to you is, what did Fritz von Opel say to you about this subject? A. He advised me that I was in error regarding this matter; that Uebersee was his personal property, but that a usufruct in favor of his father was outstanding.

Q. As a lawyer, what did you understand him to mean when he said that a usufruct in favor of his father was outstanding? A. At the moment, I did not form any fixed idea.

Q. Well, you knew what a usufruct was, did you not?
A. Yes.

Q. Now, when you learned that the property was held subject to a usufruct in favor of Wilhelm von Opel, did you come back to Mr. Bernstein and say you had made a mistake? A. No; but I made a statement in a sworn affidavit which I made before a notary public in New York. From that time on, I did not handle the gold matter any more; it was up to the American attorneys.

Q. I see. When you made this affidavit, did you tell the truth? A. Whether it was correct or incorrect with respect to the usufruct, I do not know; I only stated
2298 therein what Mr. von Opel told me.

Q. But you did not intentionally make any misstatement in 1935 when you filed an affidavit with the Treasury, did you? A. No, certainly not.

Q. I want to show you a German translation of the affidavit and ask you if you recognize it.

Mr. Burling: If Your Honor please, this is a translation which we have prepared of the affidavit, which ap-

pears in Defendant's Exhibit 8, at page 23 of the record in the Second Circuit.

The Witness: It is my statement, but I have not checked yet whether the translation corresponds to what I stated.

Mr. Gallagher (To the interpreter): Why don't you advise him to go along with Mr. Burling, and if there seems to be any contradiction, we will agree that this is correct.

Mr. Burling: I intend to read in English from the official record of the United States Circuit Court of Appeals for the Second Circuit, in which record the affidavit is incorporated; and counsel have agreed that that is a correct copy of the affidavit.

By Mr. Burling:

Q. Now, during the years 1932, 1933, 1934, and 2299 1935, it was your practice, was it not, to take no part in the direct management of the corporation?

A. I was a member of the administrative board. It is stated in the translation, "member of the board of directors," which is not quite accurate. But as a member of the administrative board, I did not have a direct hand in the management of its affairs.

Q. Did there ever come a time when you did have a direct hand in the management of the affairs of the corporation? A. That became necessary when Mr. Frankenberg left in the year 1940, and we were left alone without connection with Mr. Fritz von Opel.

Q. In other words, up until 1940, Frankenberg ran the company; isn't that true? A. Administratively speaking, yes. The technical and financial management was in the hands of Fritz von Opel.

Q. Frankenberg was, in the years 1932 through 1935 inclusive, the managing director, wasn't he? A. Managing director is not correct. He was that member of the administrative board that managed the affairs of the company.

Q. You did swear in your affidavit that Frankenberg was the managing director, didn't you? A. That 2300 is evidently the translation. I have had to sign so many documents in which I was referred to as a member of the board of directors.

Q. Do you generally swear to documents in foreign languages without assuring yourself that you understand what you are swearing to? A. No, that is not my practice.

Q. Did you assure yourself in the case of your affidavit of May 28, 1935, that you understood what you were swearing to? A. Yes. May I explain how this statement came about?

Q. Surely. A. I was at that time in New York, and I discussed the gold matter with the firm of Davis, Polk, et cetera, and fifty others.

Q. To be exact, it is Davis, Polk, Wardwell, Gardner & Reed, is it not? A. There was another farther down with whom I also negotiated.

Q. But, at any rate, before you signed the affidavit, you had satisfied yourself, had you not, that you understood what it meant? A. I wish to state how this statement was gotten up.

2301 Q. Very well. A. The attorneys presented questions to me, and we formulated the statements therein, because obviously I cannot write English the way. There were also legal statements, and for several days I worked in the library of the New York Bar Association.

Q. We can shorten this if you will just tell me if you satisfied yourself before you swore to the affidavit that you understood what you were swearing to. A. Certainly; I could swear to it, if it related back to that time, even at this moment.

Mr. Burling: Since counsel has agreed that the record is correct, I should like to read one sentence at this point. I want to ask the witness about it, so I will ask that it be translated.

"Dr. Frankenberg is, and has been since 1932, in effect managing director of said corporation, conducting substantially all of its affairs, subject to the advice and consent of the other two directors."

The Witness: It is in order.

By Mr. Burling:

Q. Will you now state whether that sentence which I have read you from your affidavit is correct or incorrect?

A. It is correct.

2302 Q. And that state of facts continued up until 1940, when Dr. Frankenberg left for Haiti; isn't that true? A. Yes, sir.

Q. It was not your practice during any year prior to Frankenberg's departure to take a direct hand in the management; isn't that true? A. Not a direct hand in the management itself.

Q. After your talk with Fritz von Opel but before the moment at which you swore to this affidavit, were you not in doubt as to whether Fritz von Opel held all the shares—had held legal title to all the shares—of Uebersee, or whether he had legal title only to some of them and held the others for members of his family?

Mr. Gallagher: I am a little bit at a loss myself to understand that.

Mr. Burling: I am sorry; I will try to clarify the question.

By Mr. Burling:

Q. Addressing yourself to the time between the moment of the execution of this affidavit and going back to the time you saw Fritz von Opel after his fishing trip— A. This statement was made after the return of Mr. Fritz von Opel.

2303 Q. But you saw Fritz von Opel after his return on May 14, 1935, did you not? A. I saw him repeatedly. Once he was here in Washington with me during a conference with some high official in the Treasury Department, and I saw him repeatedly in New York.

Q. At any rate, at some time in the month of May, 1935, prior to May 28, 1935, it was your understanding that Fritz von Opel either owned personally shares of Uebersee or held a number of shares for members of his family is that not correct? A.—No, that was not my opinion, I was of the opinion that Fritz von Opel was the sole owner of these, and I stated here in my affidavit.

Q. Then, will you explain why you used the following words in your affidavit:

"It has always been my understanding that Mr. Fritz von Opel, a German citizen and resident of St. Moritz, Switzerland, either owned personally or held for members of his family a substantial number of shares of Uebersee Finanz-Korporation, A. G., but I have no personal knowledge on the subject."

Mr. Ingoldsby: Your Honor, if I may object at this point, the witness has testified that prior to May 14, 1935, he had a certain belief regarding the ownership of 2304 that on May 14 he met Mr. von Opel, and he was given a certain explanation. He then says that based upon that explanation he executed the affidavit on May 28. I do not see what more he can say with regard to ownership.

The Court: He just stated, right this minute, that he thought Fritz von Opel owned the shares of stock. Mr. Burling wants to ask why he put that other language in there.

Mr. Burling: That is correct.

Mr. Ingoldsby: Well, I do not want—

The Court: I myself am a little interested to know why he put that in there.

2305 A. There are two different periods of time involved.

The first sentence, "It has always been my understanding," until the end of that, refers to the period prior to May 14, 1935. But on May 14, 1935, I heard Mr. Fritz von Opel say that he was the owner of substantially all the stock of said Korporation, subject to the right of usufruct reserved in his father, Wilhelm von Opel. From that time on I no longer believed what was stated in the prior sentence, but what I stated here.

These are two different periods of time involved here.

Q. Isn't it a fact that the reason you used these two sentences, and do not aver on your oath that Fritz von Opel was himself the owner of the shares, is because you knew it was not true and that Fritz von Opel was lying to you when he told you that? A. I do not understand the question. In what respect did Fritz von Opel lie to me? I would like to ask you for an explanation.

Mr. Burling: I do not know, if Your Honor please, whether I am allowed to. I would be glad to, if I may.

The Court: It is rather difficult to get him to answer it that way, I guess.

Mr. Burling: I will try another way. I will withdraw the question—

Mr. Gallagher: Why don't you just ask him if he
2306 believes Fritz von Opel was lying to him?

Mr. Burling: No. I want to know, and I submit it is proper—

The Court: I know what you are trying to do.

By Mr. Burling:

Q. Will you state, if on May 28, 1935, you believed that Fritz von Opel owned the shares, why you did not state that simply as a fact rather than state that "It has always been my understanding that he either owns them personally or holds them for members of his family"? A. I

repeat what I said before—that there are two different periods of time involved.

Prior to the time on May 14, 1935, I came to the conclusion—and I want to point out that I did not communicate with ghosts or heard voices. I was of the opinion—I came to the conclusion—that the shares were held by members of his family; but after May 14, 1935, I was advised that Fritz von Opel was the owner.

Q. We understand that that was said to you. What I am trying to find out is why, if you believed what was said to you, you did not just state what the fact is instead of using this form.

The Court: Let me see if I can cut it short for you. Ask him why he believed that Fritz von Opel owned the control of the stock.

2307 The Witness: I had no reason to disbelieve him.

The Court: Then ask him why he used the other language in this affidavit.

The Witness: I have done that in order to explain why I gave a different explanation to the Treasury Department, since on April 29 I advised Mr. Bernstein in the Treasury Department that the Opel shares were family-owned—the Uebersee shares were owned by the Opel family.

Mr. Gallagher: If I might say, Your Honor, I would like to recall to your attention, in case it might have been lost in the days that have gone by, that these affidavits were prepared originally for use in the Treasury Department, not for use in the District Court.

The Court: I just want to try to get Mr. Burling's question over.

Mr. Gallagher: Yes, sir. That is why I wanted to clarify that they were for use in the Treasury Department.

Mr. Burling: Thank you.

By Mr. Burling:

Q. Up to and including May 28, 1935, Fritz von Opel never attended a meeting of the Board of Directors of Uebersee; is that right? A. Of the Administrative Board, no, certainly not.

Q. Did he ever, so far as you know? A. No. The question is Administrative Board, a meeting of the 2308 Administrative Board.

Q. Your affidavit speaks of a board of directors. Do you know what you meant by that? A. I stated, at folio 80, that, as far as I knew, Fritz von Opel never attended any of these meetings.

Q. And that continued to be true throughout the years down to date, did it not? A. Yes.

Q. And at least up to the 28th day of May, 1935, the board of directors of Uebersee Finanz-Korporation never entrusted Mr. Fritz von Opel with any part of the management of the Korporation, did it? A. No, not the conduct of business. The business was conducted by the Administrative Board. We alone had the rights to sign.

Q. I am not speaking of legal rights. I am asking you, isn't it true that down until at least May 28, 1935, Uebersee never entrusted any part of its management to Fritz von Opel? A. Fritz von Opel received repeatedly power of attorney to conduct specific transactions.

Q. Now, do you agree or disagree with this statement:

"The board of directors of the Korporation has never entrusted Mr. Fritz von Opel any part of the management of the Korporation"?

And that can be answered yes or no, I submit.
2309 A. No. When I refer to management of the business, I meant management of the business as it is done by a director of the company. The fact was that he did get from time to time powers of attorney to conduct specific transactions.

Q. Aren't you able, Dr. Meier, after 44 years of practice of the law, to state yes or no as to whether a sentence read from your own affidavit is true or false? A. I am of the opinion that what I stated therein is correct.

Q. And is it not true also that up until at least May 28, 1935, the Korporation insisted in maintaining the form and substance of corporate independence with respect to Mr. Fritz von Opel and Mr. Wilhelm von Opel? A. Yes.

Q. That is true.

Now, will you state why you thought it appropriate to swear in an affidavit prepared for the Treasury that the Korporation was independent in respect of Wilhelm von Opel? A. This was done because of the statement on May 14, 1935, when Fritz von Opel advised me that the shares of Uebersee were subject to a usufruct in Mr. Wilhelm von Opel. It is for that reason that we inserted in the statement a declaration to the effect that the Korporation maintained its legal independence not only
2310 with respect to Fritz von Opel, but also to Wilhelm von Opel, who is designated here as usufructuary.

Q. Now, at the time, on May 14, 1935, that Fritz von Opel told you that he had legal title and Wilhelm von Opel had the usufructuary interest, do I correctly understand you to say that you believed him? A. I had no reason to disbelieve him.

Q. So the answer is yes? A. Yes.

Q. Do you believe him this minute as you sit on the witness stand and testify under oath? A. I still believe that he made that statement at that time in good faith.

Q. Do you as you this minute sit on this witness stand and testify under oath think that Fritz von Opel told you a correct fact?

Mr. Ingoldsby: I submit that that is argumentative now. He stated, "I have no reason to disbelieve." He then

states that "I believe he made the statement in good faith." The question contains a conclusion of law.

Mr. Burling: The purpose is obvious.

The Court: It may be a mixed conclusion of law and fact.

Mr. Ingoldsby: It is.

Mr. Burling: This is a Swiss lawyer. It is a mixed question of foreign law.

2311 The Court: You may ask him, I suppose.

Mr. Burling: Does your Honor sustain the objection to the form of the question?

The Court: If he understands the question, I will let him answer it.

Mr. Burling: Will you read it, please?

(The last question was read by the reporter.)

The Witness: At that time, yes.

By Mr. Burling:

Q. No. The question is now, this minute. A. I was compelled in the meantime to come to the conclusion that this usufruct was not created.

Q. And who told you that the usufruct was not created? And when? A. Again, these were no ghosts, but I thought about the matter.

Q. Did anybody ever tell you anything after May 28, 1935, on the basis of which you exercised your mind?

Mr. Burling: Just a moment. I can't understand, but it is perfectly clear the answer to the question, "Did anybody tell you anything?" is yes or no. I would request permission, if Your Honor please, to tell the witness through the interpreter that this question can be answered yes or no.

The Court: Just ask him if anybody told him any facts about it and answer it yes or no.

2312 The Witness: No.

By Mr. Burling:

Q. So your testimony is that nobody, from May 28, 1935, on, ever told you any fact concerning the creation or non-creation of the usufruct? A. No.

Q. Now, when you went back to Zurich after you were here in 1935, did you have any talk with Frankenberg about what you had been doing here? A. Certainly.

Q. What was that conversation, please? A. I cannot state that.

Q. But, at any rate, Frankenberg never told you anything about the usufruct? A. I could not state that.

Q. And you did not tell Frankenberg, did you, that you had made an affidavit stating that Fritz von Opel had told you that his father owned the usufructuary interest in the property? A. I cannot say that. I do not know it.

Q. And you have no recollection of Frankenberg's having said anything to you after you told him—in the event that you did—about your affidavit and about the usufruct?

A. In order to answer that question, I would have
2313 to know what I would have told him if I did, in order to be able to say what he told me if he did.

Q. Well, that seems to be a fair point. But, at any rate, you have no recollection now at all of any talk which you ever had with Frankenberg after your return from Washington in 1935 about the usufruct? A. No, not specifically. Of course, I did inform him generally, in part through that memorandum to the files, as to what went on here; but I cannot recall any specific details.

Q. And you do not recall any conversation which you had after May 28, 1935, with Fritz von Opel about the usufruct, do you? A. I do not even recall when I saw Fritz von Opel subsequent to that time.

Q. All right. Now, how is it, if you did not hear voices, that you came to the conclusion that the usufruct had not been created? A. May I talk now without being interrupted?

Q. Provided you answer the question, yes.

Mr. Gallagher: If Your Honor please, I would just like to explain one thing. The difficulty I think the witness has, and of which Mr. Burling is not aware, nor possibly the Court, and that I certainly was not aware of until this noon, is that I found out today that in Switzerland, 2314 when they are testifying in court, or when they appear in court, when the Court asks you something, you never answer yes or no; you have to tell the whole story.

Mr. Burling: I submit this man has been practicing many more years than I have lived. It is inconceivable that he does not know, even if he has not practiced here, how to answer a straight, simple question.

Mr. Gallagher: I want to point out that his explanation might be long. I do not know what it is going to be any more than you do.

The Court: What is the question?

(The last question was read by the reporter.)

The Court: I guess I will have to let him answer it in his own way.

Mr. Burling: I agree, provided he confines himself to the answer.

The Court: The trouble with me is that he can talk a half hour and I would not know whether he is answering or not. I think we will have to go ahead.

Tell him to answer it as briefly as he can, without arguing it.

The Witness: I do not know the legal prerequisites of the German institute of usufruct as to form and defect. I assume that they are similar to those in the Swiss law.

According to Swiss law, a usufruct is created by 2315 transfer of possession. The usufructuary, pursuant to his right of usufruct, votes the shares that are

the subject thereof. The usufructuary is entitled to the use of the res.

All these rights were never asserted by Mr. Wilhelm von Opel. The shares of Uebersee were represented in the general stockholders meetings of Uebersee Finanz-Korporation, A. G. by Firma Verwaltungsanstalt Vaduz.

These considerations have led me to the conclusion that the usufruct was not established.

By Mr. Burling:

Q. In May, 1935, where were the shares of Uebersee, if you knew? A. They were with the Firma Verwaltungsanstalt Gesellschaft.

Q. It is your belief now that in May, 1935, the certificates physically were in Liechtenstein? A. I think so, because they were represented by Mr. Gaeng as the administrative officer of that company.

Q. Nobody ever told you that they were in Box 1917 at the Schweizerische Kreditanstalt and that Dr. Hans Frankenberg had the key to the box? A. It is possible that there was talk about that, but I could not testify to it as a fact.

Q. Do you know whether or not it is true that Fritz von Opel swore that that was the fact in an affidavit which he made which was filed together with your own? A. I do not believe that I had knowledge of that.

Q. Coming to a different topic, will you state the period of time again when the books which you identified this morning were kept in your office? A. I can state the beginning precisely. It was shortly after the domicile of the Korporation was removed to Liestal, but I do not know the end, whether it was 1935 or 1936.

Q. What year did it begin? A. It was with the removal of the domicile to Liestal. The books were taken along.

Q. I just want to know the year, please. A. I cannot state it any differently than that it coincided with the removal of the domicile to Liestal. A cable could be addressed to Mr. Gaeng to find out precisely when that was, but I do not know it any other way, but I cannot state when the period ended.

Q. What is your best estimate of when the period ended? A. I do not want to be prosecuted for false testimony, but I believe it was about three or four years.

Q. I want to know the date, as closely as you can fix it, when the books were taken out of your office. A. I cannot say any more than I just stated.

Q. You have not said anything so far, Doctor.
2317 A. According to my estimate—and I do not want to be responsible for that—they were about three or four years in Liestal.

Q. But I do not want to know how long they were in Liestal; I want to know when they were taken out of your office. A. I can't state that.

Q. Was it before 1900?

The Court: We are just wasting time here.

Does he know when they were brought there?

Do you know when they were brought there? Did you say 1935 or 1936?

The Witness: I cannot state it any more definitely. I had to leave Zurich rather precipitately and had no chance to prepare myself, and now I am asked to state under oath details which I simply cannot remember. They lie back ten years or more.

Mr. Burling: If Your Honor please, I do not want to waste Your Honor's time. I am trying to lay the foundation that after some period, which I can't ascertain, this witness never saw the books any more and therefore can't identify them.

Mr. Gallagher: If I can help Mr. Burling on that, I will be only too glad. I think if you asked the question,

"When were the books removed from Liestal and 2318 brought back to Zurich?" you will find out. I think it was sometime between 1942 and 1943. That is the statement he made to me. His office is in Liestal.

By Mr. Burling:

Q. Will you try to give us your best estimate as to when the books were taken by Gaeng away from your office in Liestal and back to Zurich? A. I cannot state it any more than I said before.

Q. Can you give us any estimate at all of a date? A. I cannot state. I would be glad to state it, but I just can't.

Mr. Burling: Well, I move to strike all the testimony of this witness concerning these books if he is so unfamiliar with them that he can't make any estimate as to when they were taken out of his office.

The Court: That goes to the weight of his testimony.

Mr. Gallagher: He also testified that he saw them at the board meetings, anyhow.

The Court: I will overrule the motion. He testified they were in there some time.

By Mr. Burling:

Q. Until you saw the books here in Washington just now, when had you seen them for the last time? A. The last time when I saw them was when we prepared the books for shipment in accordance with what was 2319 demanded to be produced. That is when I saw them for the last time.

Q. And where were they then? A. At Adler and Company. Now, I do not recall whether the books themselves were brought there or only a list of them.

When the order came we held a meeting of the board of directors. Mr. Gaeng, who was an extremely fearful

man, did not want to ship them, because he did not want to undertake the responsibility. Mr. Gaeng was outvoted by my vote, and that of Mr. Frankenberg, and he made a statement on the record that he did not want to be held responsible if they were lost while in transit.

Q. So you do not remember whether at the time that the books were demanded in this country you saw them or not, is that correct? A. I think that I saw them, but I would not like to swear to it.

Q. Where and when did you see them for the last time before that? A. The books were exhibited for a limited period of time during the general meetings, and I did see them when I held directors meetings together with Gaeng when we were alone in his office.

Q. Is there an entry in any of the books in your 2320.. handwriting? A. No.

Q. Now, going back to Transdanubia Bauxit, A. G., will you state, if you know, how the shares were voted during the years 1941 through 1945, inclusive? A. As far as I know, not at all. As far as I know, we never got an invitation to attend a general stockholders meeting.

Q. You owned 100 percent of the stock, didn't you? A. Yes, to my knowledge.

Q. Well, didn't you take any action with respect to voting that stock for all those years?

Mr. Gallagher: State the years. Will you give them again?

Mr. Burling: 1941 through 1945, inclusive.

The Witness: I stated the matter this morning, I did not do anything. And I also said that I am responsible to Mr. von Opel if he sees it fit to call me to account for it.

By Mr. Burling:

Q. Did the fact that you had not voted the shares for 5 years just slip your mind? You did not happen to

think of it? A. I do not know what I should have done.

Q. Well, isn't it customary in Swiss banking practice to vote shares at least once a year—that is, the 2321 shareholders to vote? A. For instance, we have not exercised our vote in the United States. I do not know who exercised that right.

Q. Well, I will be glad to advise you. My client does, Doctor, the Attorney General of the United States.

The Court: I am afraid we are going a little too far afield. We are making no progress at all.

Mr. Burling: I have one more topic.

The Court: Yes. I am going to stop in 10 minutes. We have got to get through this case Monday.

Mr. Burling: What I am trying to bring out is the improbability that this Transdanubia just disappeared.

The Court: I followed a considerable line of questioning on that this morning. I will give you as much latitude as I can on it, but we are going an awfully long time on it.

Mr. Burling: Very well, Your Honor. I will come to my last topic.

By Mr. Burling:

Q. What is Consortium O? A. As far as I know—I did not concern myself with this case at the period when the Corporation was established, but, as far as I can see, the Consortium O is—but it was a syndicate that was established during the incorporation of Uebersee.

Q. And the O stands for the Opel family, does it not?

A. I imagine so.

2322 Q. And you understood that the Consortium O was a syndicate of the Opels, didn't you? A. To be honest about it, I heard about the syndicate Consortium O for the first time when I came here.

Q. And from whom did you hear about it? A. We

looked the books over together and one of the gentlemen—I believe it was Professor Kaufman—talked to me about it.

Q. You had never seen the entry relating to Consortium O in Switzerland? A. Not to my knowledge.

Mr. Burling: I am sorry. There was one other topic which I forgot, Your Honor.

By Mr. Burling:

Q. Going back to 1931 and 1932, did you act as attorney for Fritz von Opel in attaching any bank accounts?

See if I can refresh your recollection. Did you bring an attachment proceeding on behalf of Fritz von Opel against an account in the name of Wilhelm von Opel of 3,800,000 Swiss francs? A. I remember that. An attachment was made pursuant to Swiss law.

Q. The question is, did you handle it? A. So far as I remember, it was an account with the Credit Swiss.

2323 Q. And did you handle the attachment proceeding? A. The attachment was made and I believe a start was made to get a transfer of the amount attached, but Fritz von Opel then instructed me to let the matter ride.

Q. So I take it the answer to my question, did you handle it? is, "Yes"? A. Yes.

Q. And did you bring the proceedings in good faith? A. Certainly, I started in good faith. It was not carried through.

Q. And what did you understand the basis of the claim for the attachment was? A. Evidently, in order to save the account from the seizure by the Hitler regime or by a coming Hitler regime, in order to get the money out from Germany.

Q. The idea, in other words, was to get Wilhelm von Opel's money out of Germany, wasn't it? A. Evidently, yes.

Mr. Burling: May I say to Your Honor, I am not sure whether I have any further questions? May we adjourn without my resting?

The Court: Do you have any redirect?

Mr. Gallagher: Yes, Your Honor

The Court: How long will it take?

Mr. Gallagher: Mr. Burling does not want to
2324 finish with the witness now.

Mr. Burling: You are going to stop in two or three minutes?

The Court: Well, I have a meeting in my room, but I was going to let them come in when they arrive. They may be a few minutes late.

Mr. Burling: If you give me 30 seconds, I think I can—

The Court: All right.

• By Mr. Burling:

Q. I am going to ask you to examine Defendant's Exhibit 50, which has been conceded to be a copy of a letter from the files of Uebersee Finanz-Korporation, addressed to the Swiss Federal Banking Commission. Do you recognize that letter as having been prepared by you (handing a document to the witness)? A. I do not think that I signed this letter, but I do not know.

Q. Now, I want to read to you a sentence from the letter and then ask what explanation you can give to it in your capacity as president of your corporation:

"The entire capital of our company comes from a single group, which also has a controlling interest in the capital stock."

Mr. Gallagher: Your Honor, I do not know how this
2325 witness can explain a letter which he says he does not know whether he signed or who signed it. He does not know whether he saw it.

Mr. Burling: If I produce a letter from the files of the corporate plaintiff, I submit I am entitled to ask the president of the corporation if he had seen it.

Mr. Gallagher: If he wrote it or had seen it.

The Court: If he had any knowledge of it.

Mr. Gallagher: If he knew about the letter, he can say.

The Court: He can say whether he knows anything about it. I won't draw it against him if he does not know anything about it.

Mr. Gallagher: Will you ask the question again?

Mr. Burling: Will you read the question?

(The last question was read by the reporter.)

By Mr. Burling:

Q. It is a letter from Uebersee to the Swiss Federal Banking Commission, dated November 1935.

Mr. Gallagher: I would like the Court to keep in mind that the date on this letter is subsequent to the formation of the Frima trust.

The Court: Yes; I have that. All right, go ahead.

2326 A. This letter was written after the Swiss banking law was put into effect. Prior to that time Switzerland did not have special banking statutes, but the banks were subject to the code of obligations.

Pursuant to this banking statute, banks and financial institutions similar to banks are required to register under the banking law. The Federal Bank Commission, which is a legal institution, requested the Uebersee to file an application for registration under the Swiss banking law.

The Court: That is not what Mr. Burling is trying to get at; he is trying to find out why the witness is talking about a syndicate.

Mr. Burling: A single group.

The Court (To the interpreter): Ask him why he is talking about a single group.

(The statement of the Court was propounded by the interpreter to the witness.)

The Witness: In order to show that there was not a large number of shareholders but a very narrow group.

By Mr. Burling:

Q. Who did you think the members of this very narrow group were in November, 1935. A. I don't know what is meant thereby. I did not write this letter, and I did not participate in these proceedings until a later date, and I cannot state what other people thought or understood stood by that version.

Q. You did not oversee or supervise the registration of your company, as required by the Swiss Banking Commission? A. I was not called into this matter until a later date, and at that time I prepared an appeal to the Swiss Federal Court, and pending that appeal the Swiss Banking Commission nevertheless classified the bank as—classified Uebersee as a bank.

I in my appeal to the Swiss Federal Court gave different reasons than those stated here. I stated that Uebersee Finanz-Korporation did not accept foreign—money from outsiders and was not engaged in administering foreign funds. I won on that—we won on that point.

Q. When were you called into this registration problem? A. After the Banking Commission had given a negative answer to our request—that is, classified us as a banking institution.

Q. In any event, it was before June 2, 1937, was it not? A. Undoubtedly.

Q. Then, will you examine Defendant's Exhibit 117-A?

Mr. Burling: I ask for a concession that the document came from the files—

2328 Mr. Gallagher: Is that introduced yet?

Mr. Burling: No; I am introducing it now.

(Defendant's Exhibit 117-A was received in evidence.)

By Mr. Burling:

Q. I ask you to examine Exhibit 117-A. Did you see this letter, which is dated June 2, 1937, which is also addressed by Uebersee to the Swiss Federal Banking Commission? A. According to the entire arrangement and the manner in which it is written, this letter, just as the other one, was not written by me.

Q. Didn't you testify that you did come into the problem of the registration with the Swiss Banking Commission shortly after the letter of November, 1935? A. But I cannot state which letter produced the decision of the Banking Commission against which I appealed to the Federal Court. It may have this letter, or it may have been the subsequent letter.

2332 Q. Will you look, please, at Defendant's Exhibit 117-A, which is a letter from Uebersee Finanz-Korporation to the Swiss Federal Banking Commission, dated June 2, 1937.

Do you have any explanation which you can give, in your capacity as president of the Uebersee Finanz-Korporation, for the words:

"The creditors are recruited from the same circles as our stockholders, and the stockholders belong exclusively to a very small group"?

A. I have not written this letter, and I have seen it for the first time now. It originated during a period when the shares were held by a syndicate of officials of the

Swiss bank—of the Union Bank of Switzerland. I do not know whether the writer of this letter referred to
 2334 the syndicate in this letter or what he meant when he used these words.

Mr. Burling: May the record show that the word which Mr. Laufer translated as "syndicate" was the word "Consortium" in the German?

The Court: You can ask him that.

The Witness: Translated?

The Court: I guess he does not know.

Mr. Burling: I think Mr. Laufer knows.

The Court: I think we all heard him say "Consortium"; I don't know. Without objection, I will permit that to go into the record.

Mr. Burling: Thank you.

Redirect Examination

By Mr. Gallagher:

Q. Dr. Meier, in 1932, 1933, and during the years other than the years when these shares of Uebersee were owned by some Swiss, how many stockholders were there in the Uebersee Finanz-Korporation? A. There were four.

Q. Would you name who they were? A. The three members of the Administrative board, to wit, Mr. Frankenberg, Dr. Henggeler, and I myself, and then Mr. Fritz von Opel.

Q. You have just testified, Dr. Meier, that Dr. Henggeler, Dr. Frankenberg, you and Mr. Fritz von Opel owned the shares of stock of Uebersee. Would you
 2335 now state whether you considered that a small group? A. Certainly. Is the idea this: that these are too few in number in order to constitute a group?

Q. That is all right. You have answered. A. I would designate even fewer than these as a group.

Q. I see. And are fewer than four considered a group in Switzerland when you are talking of designation of financial interests and ownership? A. Certainly.

Q. Now, Mr. Burling, in the record at page 2323, stated to you as follows:

"Question: And what did you understand the basis of the claim for the attachment was?"

Your answer was: "Evidently, in order to save the account from the seizure by the Hitler regime or by a coming Hitler regime, in order to get the money out from Germany."

Then Mr. Burling asked you:

"The idea, in other words, was to get Wilhelm von Opel's money out of Germany, wasn't it?"

You answered: "Evidently, yes."

Do you have anything further you wish to say with respect to those questions and answers? A. Yes.

Q. Will you please answer? A. This matter dates back some 17 or 18 years. As a matter of fact, I haven't 2326 thought of that matter in the meantime once. When the question was addressed to me, the matter gradually came back to me, without having any documentary evidence at hand. I have meanwhile checked the file again for the matter, and I found that my instructions at the time were to assert a claim which Fritz von Opel held against his father, and the possibility then existed to assert this claim effectively in Switzerland. Under Swiss law, jurisdiction arises when there is property situated in Switzerland, and as a result of the attachment, the claim could be asserted by Mr. Fritz von Opel in Switzerland.

Q. Do you recollect for how long a period of time Mr. Fritz von Opel would have had the use of those Swiss francs if the attachment proceedings had gone on through to a successful conclusion? A. On the basis of the docu-

mentary evidence, I refreshed my recollection, and I must state that without the underlying documents, I could not have recalled it. Fritz von Opel would have been able to use this money for a limited period. A period of about two years.

Q. Now, His Honor requested that I ask you a question on redirect, and it was with respect to a question put to you by Mr. Burling and an answer which you gave. The question was:

“Very well. Now, who was exercising the responsibility of supervising the officers of Transdanubia Bauxit when Fritz von Opel was interned?”

The answer was: “Our company.”

At that time you wanted to explain, and there was no opportunity for explanation. Do you wish to explain that statement?

I was reading from page 2273 of the record.

Mr. Burling: I object to Mr. Gallagher's statement. There is nothing in the record indicating that the witness wanted to explain anything.

Mr. Gallagher: If you will look at the line below “The question is just—” at that point you said:

“I suggest that if there is an explanation, the appropriate time for it to come out—”

and there was considerable colloquy between us.

His Honor then said I could bring it out on redirect.

Mr. Burling: Page 2273 does not in any way indicate that the witness indicated he wanted to explain anything; it indicates that you wanted an explanation.

Mr. Gallagher: I wanted to hear, because he had started to explain, and you had cut him off.

The Court: Do you know what you want to find out?

Mr. Gallagher: Yes.

The Court: You may ask him a question.

By Mr. Gallagher:

2338 Q. Would you explain what you meant by that answer? A. From a legal point of view, the control over the subsidiary was with our company. As a matter of fact, this control was not exercised, as I have pointed out.

Q. Did you give any orders to the officers of Transdanubia? A. I never gave any order of any kind at any time.

Q. Did the Uebersee Finanz-Korporation, to your knowledge, or any officer thereof, subsequent to December 6, 1941, give any orders to the officers of Transdanubia? A. No.

Q. Did you or any of the other officers of Uebersee direct the operation of the mines in Hungary owned by Transdanubia, to your knowledge?

Mr. Burling: I object to his testifying as to what Hengeler may or may not have done.

Mr. Gallagher: I am asking to his knowledge.

The Court: The extent of his knowledge is all right.

By Mr. Gallagher:

Q. To your knowledge, did any officer of Uebersee give any directions subsequent to December 6, 1941, with respect to the problem of operating mines, particularly this Transdanubia mine? A. To my knowledge, no.

2339 Q. Would you explain what you meant by the statement that the Board of Administrators never entrusted Fritz von Opel with any part of the management of the Korporation? A. I wish to state that the general conduct of business—that is, the management of its affairs—was never entrusted to Mr. Fritz von Opel; that, however, from time to time specific powers of attorney were conferred on him for the purpose of transacting specific transactions.

Q. Are you speaking of the inner workings of the board when you say that he was not entrusted with the management? A. Yes, that is what I mean.

Q. You have stated previously that Fritz von Opel controlled all the investments and did all the investing for the Korporation; is that correct? A. At any rate, he acted exclusively in conformity with his directives.

Mr. Gallagher: We have no further questions of Dr. Meier, Your Honor.

Mr. Boland: Your Honor, it will be recalled that sometime in the past a suggestion was made in connection with the stipulation on the Liechtenstein citizenship law. We have a copy of the statute itself, together with the translation, which we would like to have identified.

Mr. Burling: Well, I have some recross examination.

Mr. Boland: Oh, I beg your pardon.

2340

Recross Examination

By Mr. Burling:

Q. You say that at all times except when the officers of the Swiss Union Bank held the Uebersee shares, the four stockholders were Frankenberg, Henggeler, Fritz von Opel, and yourself; is that right? A. Yes.

Q. You know that that is entirely inaccurate, do you not? A. A distinction must be made there. I did not know prior to the discussion with Fritz von Opel on May 14, 1935—I was not informed until that time concerning the ownership of the shares.

Q. I am asking you if you do not know now—this very minute—that what you just told Mr. Gallagher was incorrect and untrue. A. I am not aware of that.

Q. Who are the stockholders today? A. As of today, just as I stated here, the four shareholders are Mr. Frankenberg and myself; and in place of Dr. Henggeler, Mr. Gaeng; and Mr. Fritz von Opel.

Q. Don't you know that that is not correct? A. No, I don't know that. I would like to know why it is not correct.

Q. Are you unaware that the owner of 97 shares 2341 of Uebersee is the Verwaltungsanstalt, located in Lichtenstein? A. Yes, that is correct from a legal point of view; but in Switzerland we consider this as economic ownership.

Q. You understand that this is an American court of law, don't you? A. Yes. If Mr. Burling's opinion were correct, I would have won an appeal on matters of taxation which, in fact, I lost. I have taken the position that, legally speaking, Frima and Uebersee Finanz-Korporation are two different personalities, and I was given the decision that, beneficially speaking, Uebersee and Frima are one entity—one unit; but I am grateful for having called my attention to that.

Q. Very good. And you do not have any personal knowledge, do you, as to who the beneficial owner of Frima is? A. I have never considered anybody else to be that except Fritz von Opel—that is since the time that I was given the information.

Q. In other words, you know that legally Frima owns all but three shares, and the only basis that you have for thinking that Frima is beneficially owned by Fritz von Opel is what he told you on and after May 14, 1935?

A. And what I have seen in the company since that time. I refer to my testimony with respect to the usufruct.

Q. Now, you do not think that either you or Frankenberg or Henggeler is a member of the Opel family, 2342 do you? A. I don't have the honor.

Q. Yet you told Bernstein, in the Treasury, that you thought that Uebersee was owned by a small group of members of the Opel family. Did you not? A. Yes. As I have testified already at length, I have made that statement at that time not because I was hearing voices, but on the basis of my own inferences.

Q. Now, with respect to the attachment proceedings brought in 1932 against the 3,800,000 Swiss francs in an account in the name of Wilhelm von Opel, after you stopped testifying on Friday you discussed this 2343 matter with counsel, did you not? A. Mr. Fritz von Opel made available to me the correspondence which I had at that time—I do not have it now—and on the basis of this, I had to correct my statement.

Q. What correspondence do you say you examined? A. A letter of Adler and Company addressed to Mr. Wilhelm von Opel, and, further, I believe a letter of Adler and Company addressed to Fritz von Opel.

Q. And did you have any discussion on this topic with anyone other than Fritz von Opel? A. Unfortunately, I could not discuss the matter with the other gentlemen, since I do not understand English sufficiently.

Q. So your testimony is that Fritz von Opel is the only person you spoke to about this? A. I was unable to speak to any of the gentlemen, because I cannot make myself understood.

Q. All right. Now, what conversation did you have with Fritz von Opel on this topic? A. Mr. Fritz von Opel called my attention to the fact that my recollection was obviously not accurate. When he showed me these documents, my recollection was refreshed. In order to initiate arrest—attachment proceedings, there must be a debt 2344 owing by the owner of the lease which has been attached.

If I had gone to the court and told the court that Mr. Wilhelm von Opel wants to get money out of Germany, I would have been unable to obtain an attachment. There had to be a creditor whose claim was being enforced in order to obtain an attachment.

Q. But you understood, in any event, that the purpose of this legal proceeding was to get Wilhelm von Opel's money out of Germany, did you not? A. Not at that time. Now that I remember the matter, after eleven years,

that is what I thought. At that time I went before the court and said, "There is a claim of Fritz von Opel against Wilhelm von Opel. Wilhelm von Opel has property in Switzerland, and I would like to have an attachment to be issued."

Q. And it is the fact, is it not, that Fritz von Opel told you, back in 1932, that his purpose was to help his father get his father's money out of Germany? A. No, that was not so. The German Foreign Exchange Control officers had refused to let Wilhelm von Opel pay out this amount to Fritz von Opel. In order to force the German Foreign Exchange Control officers to permit that, the attachment was obtained and in that manner the power of the German Foreign Exchange Control officers was eliminated.

Q. And that was the purpose of your activity, 2345 wasn't it? A. The purpose was that the father was compelled to pay over to the son. That was the purpose.

Q. But the underlying purpose of bringing the action was to help Wilhelm von Opel get money out of Germany and avoid the German foreign exchange controls? A. Wilhelm von Opel had undertaken a liability toward his son, and in order to enable Wilhelm von Opel to discharge that liability and because the German Foreign Exchange Control authorities had refused to permit that, for that purpose the attachment proceedings were initiated.

Mr. Burling: That is all.

Mr. Gallagher: No further questions.

The Court: Let him step down.

(The witness left the stand.)

Mr. Boland: During the presentation, Your Honor, of my portion of the testimony, there were several exhibits that had not been offered.

At this time I would like to offer 102, 103, 104, and

also the A's of those numbers, in addition to 177 and 177-A.

(Plaintiff's Exhibits 102, 102-A, 103, 103-A, 104, 104-A, 177 and 177-A were received in evidence.)

Mr. Gallagher: Your Honor, at this time we
2346 would like technically to close our case in chief,
and I would like to renew three or four motions to
strike.

MOTION TO DISMISS COMPLAINT

Mr. Burling: Before those motions are made, I believe it would be proper for me to make a technical motion to dismiss the complaint at the end of the plaintiff's case. I appreciate the motion is merely made technically, because of the fact that our case also is complete, but I think the record should include such motion.

The Court: All right. I will overrule that motion.

Mr. Gallagher: Now, Your Honor will recollect that in the course of the colloquy with Mr. Burling, when we were discussing the Giuliani letters, which are the letters from Giuliani to Frick, according to the Government's statement, with respect to doing business prior to 1941 and down subsequently through the war years, Your Honor's position was that it might show some continuendo and it might be tied in. Therefore, you permitted it to come in over objection.

Now we would like to renew our objection particularly with respect to those letters which the Government offered in an endeavor to show a doing business of Transdanubia during the years 1942, 1943 and 1944. First of all, they
2347 have not been tied in; but, even more important, the
letters are clearly violative of any concept, in our
opinion, we submit, of the hearsay rule.

If I might read just a sentence or two from the record, at 1386, when Mr. Burling was undertaking to lay a

predicate for the admission of these letters, he said to Mr. von Opel:

"Question: I show you Government's Exhibit 99-A for identification and ask you if you can identify the stamp signature."

He says yes, he can identify the stamp signature, and he says:

"Question: And is it not the fact that the signature on the right-hand side of the two signatures is that of Georg von Krausz?"

von Opel says in answer:

"I guess it is."

Then he asks him about Exhibit 100-A. I won't take time to go through each one of them. They are all on the same point:

"I show you Defendant's Exhibit 100-A for identification, and ask you if it is not the fact that the signature, that the stamped signature is Transdanubia Bauxit Aktiengesellschaft, and that the right-hand of the two signatures is that of Georg von Krausz."

2348 Mr. von Opel says:

"I am not so sure. It is very badly written. It might be. It starts with a 'K'."

He says:

"And is it not the fact that the left-hand signature is that of Somogyi?"

"Answer: I couldn't read it. I never saw the signature."

Mr. Burling offers them, and the letters go on into evidence.

Now, they have not brought Mr. Giuliani here to testify.

Mr. Burling: Mr. Giuliani is dead, as I stated to counsel.

Mr. Gallagher: There is another Giuliani living, of the Giuliani brothers.

Mr. Burling: The one who did business with Fritz von Opel—

Mr. Gallagher: There has been nobody here to testify what these letters were, that they really were authentic. There is nobody here to testify that it was Georg Krausz' signature. We submit those letters are violative of the hearsay rule.

The Court: What are the exhibits? I had better have them.

2349 Mr. Gallagher: They are exhibits commencing with Exhibit No. 99. These are Defendant's Exhibits 99, Defendant's 100, Defendant's 101, Defendant's 102, Defendant's 103-A, Defendant's 104-A, and Defendant's 103 and 104. Those are the letters which are referred to between pages 1386 and 1393 of the record.

Mr. Burling: I object to ~~any~~ objection now being made on the ground of hearsay. The only objection which my friends offered was the objection that this was not tied in. I think technically there was an objection of res inter alios acta. They certainly never complained about the authenticity. They only saved an objection to their relevance.

Mr. Gallagher: Your Honor stated at the time, when we were going on in argument, to wait—

The Court: I am afraid, Mr. Burling, I cannot, with propriety, let you make that point, unless he stipulated to it.

Mr. Gallagher: We did not.

The Court: I mean by pretrial or otherwise.

Mr. Gallagher: No, Your Honor.

Mr. Burling: What I am trying to do is to save myself the opportunity to look at the cases and prepare myself and make this argument.

The Court: Well, your authenticity rule is pretty
2350 well established. I will hear you on it.

Mr. Burling: If Your Honor please, we first